

**GOLDENBERG, MACKLER, SAYEGH, MINTZ,  
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UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
CAMDEN

<b>THHERESA IRIZARRY and KEITH IRIZARRY, wife and husband,</b>  Plaintiff(s)  v.  <b>MOON PALACE HOTEL, MOON PALACE CANCUN HOTEL, PALACE PREMIER, PALACE RESORTS, INC., jointly, severally, and in the alternative,</b>  Defendant(s)	RECEIVED CLERK OCT 2 2009 A 11:51 CIVIL ACTION NUMBER: <b>09-5073 (NLH)</b>  <b>COMPLAINT AND JURY DEMAND</b>
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Plaintiff, Theresa Irizarry, residing at 205 Old Mill Drive, in the City of Cape May, County of Cape May, and State of New Jersey, by way of Complaint against the defendants, says:

**JURISDICTION**

1. This Court had Original Jurisdiction based upon diversity of citizenship, pursuant to 28 U.S.C.A §1332.

**PARTIES**

2. Plaintiffs are citizens of the State of New Jersey;
3. Defendant PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. is a Corporation created and existing under the laws of the State of Florida;
4. Defendant MOON PALACE HOTEL, and/or MOON PALACE CANCUN HOTEL and/or PALACE PREMIER, is a citizen and/or subject of a foreign state, as it is incorporated,

residing and doing business in the Country of Mexico, State of Quintana Roo, City of Cancun;

**FIRST COUNT**

5. At all times material hereto defendants MOON PALACE HOTEL, and/or MOON PALACE CANCUN HOTEL and/or PALACE PREMIER and/or PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. were responsible for the ownership, operation and maintenance of a hotel complex located in Quintana Roo, Mexico, commonly known as the Moon Palace Cancun Hotel;

6. At all times material hereto, defendant PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. was a subsidiary of PALACE PREMIER, and was in the business of contracting with citizens of the United States, including plaintiff, for purposes of securing membership in time share agreements for properties owned and operated by defendant PALACE PREMIER, including the property commonly known as the MOON PALACE HOTEL, and/or MOON PALACE CANCUN HOTEL where plaintiff became injured;

7. As a result of the time share agreement entered into between plaintiff and PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. a subsidiary of PALACE PREMIER, plaintiff was at all times material hereto plaintiff was a guest, patron, business invitee and/or customer of defendants at the property commonly known as the MOON PALACE HOTEL, and/or MOON PALACE CANCUN HOTEL

8. On or about October 10, 2008, while a guest, patron and invitee of defendants as aforesaid, plaintiff became severely injured and permanently disfigured as a result of suffering chemical burns upon her body upon defendant's premises aforesaid;

9. Defendants caused plaintiff's injuries aforesaid through the negligence of their agents, servants and/or employees who were in the process of chemically treating a pool and/or pond and/or fountain while guests, patrons and/or other such invitees including plaintiff were in dangerously close proximity thereto;

10. As a result of the negligence aforesaid, plaintiff was caused to be exposed to said chemicals;

11. As a result of the negligence of the defendants plaintiff suffered severe and permanent personal injuries including but not limited to second degree burns on various portions of her body; has incurred medical expenses and will in the future incur medical expenses for the treatment of her injuries;

12. The plaintiff alleges that an insufficient amount of time has passed within which to determine the identity of any other individuals or business entities who may be responsible in whole or in part for the causation of the aforesaid accident. For the purposes of the within Complaint, said individuals and business entities have been nominated as JOIN DOE, MARY DOE, ABC PARTNERSHIPS and XYZ CORPORATIONS. The plaintiff pursuant to the Rules of Court for the State of New Jersey, reserve(s) the right to amend the within Complaint relative to additional defendants when and if the identity of said individuals or business entities becomes known;

WHEREFORE, the plaintiff demands judgment against the defendants consequential damages including pain and suffering, interest, attorneys' fees costs of suit and any and all other such relief as this Court deems equitable and just.

### **SECOND COUNT**

13. Plaintiffs repeat and incorporate each and every allegation of the First Count as if same were fully set forth herein at length.

14. At all times material hereto, defendant PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. was a subsidiary of PALACE PREMIER, and was in the business of contracting with citizens of the United States, including plaintiff, for purposes of securing membership in time share agreements for properties owned and operated by defendant PALACE

PREMIER, including the property commonly known as the Moon Palace Cancun Hotel where plaintiff became injured;

15. Defendant PALACE RESORTS, INC. and/or PALACE RESORTS TRAVEL, INC. is vicariously liable for the negligence of defendant MOON PALACE HOTEL, and/or MOON PALACE CANCUN HOTEL and/or PALACE PREMIER, as aforesaid;

16. As a result of the negligence of defendants combined and concurring, plaintiff suffered severe and permanent personal injuries including but not limited to second degree burns on various portions of her body; has incurred medical expenses and will in the future incur medical expenses for the treatment of her injuries

WHEREFORE, the plaintiff demands judgment against the defendants consequential damages including pain and suffering, interest, attorneys' fees costs of suit and any and all other such relief as this Court deems equitable and just.

### **THIRD COUNT**

17. Plaintiff, Keith Irizarry, is the husband of plaintiff, Theresa Irizarry.

18. As a result of the injuries suffered by his wife as aforesaid, plaintiff, Keith Irizarry, has and will, in the future, suffer the loss of the usual service and consortium of his spouse and has been required to provide special services and care to her.

WHEREFORE, plaintiff, Keith Irizarry, demands judgment on this Count against the defendants, Moon Palace Hotel, Moon Palace Cancun Hotel, Palace Premier, Palace Resorts, Inc., jointly, severally and in the alternative, for compensatory damages together with interest, costs and attorneys fees.

### **DESIGNATION OF TRIAL COUNSEL**

Plaintiff hereby designates Michael J. Mackler, Esquire, as trial counsel in the within matter.

**DEMAND FOR JURY TRIAL**

Pursuant to F.R.C.P. 38(b) and 48, plaintiff hereby demands trial by jury in accordance with those rules as to all issues.

**CERTIFICATION**

The undersigned counsel certified that there is no other action or arbitrations pending or contemplated involving the subject matter of this controversy at this time and there are no additional known parties who should be joined to the present action at this time. I certify the foregoing to be true. I am aware that if the foregoing statements made by me are willfully false, I am subject to punishment.

GOLDENBERG, MACKLER, SAYEGH, MINTZ  
PFEFFER, BONCHI & GILL  
Attorneys for Plaintiff



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MICHAEL J. MACKLER, ESQUIRE

Dated: October 1, 2009